BANK BUMIPUTRA MALAYSIA BHD

v.

MOHAMED SALLEH

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
NH CHAN JCA
AHMAD FAIRUZ JCA
26 JANUARY 2000

CONTRACT: *Breach - Contract of employment - Group policy taken out by employer for employees - Employee suffered permanent disability - Whether employer must compensate employee in accordance with terms of contract of employment*

CIVIL PROCEDURE: *Costs - Action commenced in wrong court - Claim less than RM250,000 - Action commenced in High Court instead of subordinate court - Whether costs for successful party would have to be assessed according to scale of Subordinate Courts Rules 1980*

TRUSTS: *Contract - Trust of a benefit of a contract - Whether recognised by equity - Group policy taken out by employer for employees - Employee entitled to insurance compensation under contract of employment - Constructive trust - Whether created in favour of employee - Remedies available to employee*

The respondent's contract of employment with the appellant bank was governed by a document known as the 'Officers Handbook'. In 1983, the respondent was injured in an accident and suffered permanent disabilities. At that material time, the appellant had a 'Group Accident Insurance Policy' ('the policy') covering various risks in respect of its employees. The appellant, however, was the insured under the policy and was solely entitled to receive the benefits due to its employees under the policy. The amount payable in the respondent's case was RM75,000. The respondent thus demanded compensation from the appellant in accordance with the terms of his employment as per the Officers Handbook. The appellant declined and the respondent commenced an action in the High Court and obtained a declaration that the appellant was answerable to him with regard to the policy as part of the benefits under the terms and conditions of his service with the appellant. The appellant appealed.

Held:
Per Gopal Sri Ram JCA

[1] There was no necessity for the respondent to resort to the device of a constructive trust. This was a straightforward case of a breach of contract. Under the terms of his contract of employment, once the respondent suffered a permanent total disablement, an obligation arose on the part of the appellant to make the requisite payment.

[2] The respondent's entire claim would not have exceeded RM250,000. All that the respondent was claiming was a judgment on a contractual sum, partly liquidated and partly unliquidated. The claim should never have been brought to the High Court; it could well have been commenced in a Magistrate's Court or Sessions Court. The respondent's costs in the High Court would now have to be assessed according to the scale as set out in the Subordinate Courts Rules 1980.

Per curiam:

[1] Where a contract is made with A for the benefit of B, A can sue on the contract for the benefit of B and recover all that B could have recovered if the contract had been made with B himself. Implicitly, if A fails in his duty, B, the beneficiary under the implied trust, may successfully maintain an action to which A and the other contracting party are joint defendants. Although the courts have been extremely cautious in inferring the device of a constructive trust, especially in the absence of a clear intention to create a trust, equity has always recognised the trust of a benefit of a contract.

[Appeal dismissed.]

Case(s) referred to:
Beswick v. Beswick [1968] AC 58 ***(foll)***
Green v. Russell [1959] 3 WLR 17 ***(refd)***
Lloyd's v. Harper [1880] 16 Ch D 290 ***(foll)***
Re Schebsman [1944] Ch 83 ***(refd)***

Other source(s) referred to:
Cheshire, Fifoot & Furmston's Law of Contract, 13th edn, p 467

For the appellant - N Chandran (V Vijaya Kumar with him); M/s Albar & Partners
For the respondent - M Manoharan; M/s Karpal Singh & Co

Reported by Alex KC Lee

JUDGMENT

Gopal Sri Ram JCA:

This is an appeal against the order of the learned judge of the High Court granting the respondent a declaration sought by him in the following terms:

> that the Defendant is answerable, to the Plaintiff with regard to the said insurance coverage as part of the benefits under the terms and conditions of the Plaintiff's service with the Defendant;

Additionally, the learned judge entered judgment against the appellant in the sum of RM125,000.

The facts and background relevant to this appeal are as follows.

At all material times the respondent was an employee of the appellant. He was a Class 1 officer. His contract of employment was governed by a document known as the "Officers Handbook". This document contains the terms and conditions on which the appellant employed its employees. On 7 June 1983 the respondent met with an accident and was badly injured. He suffered a fracture of the right femur resulting in a two inch shortening. The resulting disability was permanent.

At the material time the appellant had, with a company known as Malaysia National Insurance Sdn Berhad ("MNI") a policy of insurance that covered various risks in respect of its employees. It is what is commonly called a Group Accident Insurance Policy. What it amounts to is this. The insured under the policy is the appellant. It alone is entitled to receive the benefits under the policy. But the policy does not cover any harm suffered by the appellant. It covers harm and injury suffered by the appellant's employees.

In the absence of an agreement to the contrary, under the ordinary principles that govern the law of trusts, any employee would be able to lodge a claim, as a beneficiary of the policy, against MNI. This would cause great difficulties to the insurer because it will then be faced with a multitude of claims. To avoid such a result, there is inserted in the relevant policy the following clause:

> 9. The insurers shall be entitled to treat the Insured as the absolute owner of the Policy and shall not be bound to recognise any equitable or other claim to or interest in the Policy.

The effect of this clause is that the person such as the respondent cannot recover anything under the policy from MNI directly. However the appellant is entitled to receive any benefit due to the respondent. Once received it will hold the monies as trustee for the respondent. This then is what a group insurance policy is all about.

At the time the respondent suffered permanent disability there was a term in the Officers Handbook which provided that officers shall be insured for 24 hours in respect of death or total permanent disablement due to any accident. The amount payable for such death or injury varied according to the different categories of employment. In respect of the respondent the amount was RM75,000 although we must point out that the document made available to the learned judge and ourselves stated the amount as RM125,000. This difference in amount came about as a result of a variation brought about by an appendix to the Officers Handbook. The respondent was additionally entitled to recover medical benefits as per the terms of the Officers Handbook.

As a result of the permanent disability he suffered, the respondent retired and he was paid RM3,321.43 as medical expenses. He was not satisfied and he took the view that he was entitled to be compensated in accordance with the terms of his employment as set out in the Officers Handbook.

He accordingly made a demand which was not met. He commenced an action seeking the declaration which we adverted to very early in this judgment. The action was strongly resisted by the appellant who denied liability. According to the appellant; though the point was not pleaded in the defence; the respondent could not recover any sums under the group insurance policy because of the doctrine of privity of contract. The defences raised by the appellant, however, did not find favour with the learned judge.

Before us Mr. N. Chandran with his usual ability sought to attack the judgment of the High Court. He has principally addressed us on the absence of a privity of contract in the circumstances of the present case.

The short answer to Mr. Chandran's argument is to be found in the following passage in the judgment of Lush LJ, in *Lloyd's v. Harper* [1880] 16 Ch D 290, where (at p. 321) he said:

> I consider it to be an established rule of law that where a contract is made with A for the benefit of B, A can sue on the contract for the benefit of B and recover all that B could have recovered if the contract had been made with B himself.

Cheshire, Fifoot & Furmston's Law of Contract 13th edn (at p. 467) make the following comment on Lush LJ's observation:

> Implicit in this statement is the conclusion that if A fails in his duty B, the beneficiary under the implied trust, may successfully maintain an action to which A and the other contracting party are joint defendant.

It is quite true that Courts of Equity have been careful not to permit a litigant from relying on the concept of constructive trust willy-nilly. Decisions of the English Courts show that the device of a constructive trust is not to be readily inferred in the absence of a clear intention to create a trust. (See *Green v. Russell* [1959] 3 WLR 17; *Re: Schebsman* [1944] Ch. 83.) However as we understand the principle, equity has always recognised the trust of a benefit of a contract. The decision of the House of Lords in *Beswick v. Beswick* (1968) AC 58 merely reinforces that principle.

For the respondent Mr. M. Manoharan has cogently argued that his case does not depend upon the doctrine of privity being resolved in his favour. He says that he is quite content to base his case on the contract of employment his client had with the appellant. Under the terms of that contract, according to counsel, once the respondent suffered a permanent total disablement, an obligation arose on the appellant's part to make the requisite payment. This is because provision is made for such an event in the contract of employment. He accordingly said that nothing was wrong in the way in which the learned judge approached the matter. We find ourselves entirely persuaded by this argument.

In our view there is, on the facts of this case, no necessity to resort to the device of a constructive trust. We are satisfied that this is a straightforward case of a breach of contract. The appellant has no answer to the respondent's claim for money due to him under his contract of service. The amount due to him is RM75,000 and medical expenses. The learned judge has directed the assessment of the latter by the registrar.

We are however satisfied that judgment for the sum of RM125,000 was entered in error as the sum due from the appellant to the respondent, as properly conceded by Mr. Manoharan, should be RM75,000. The order of the learned judge will therefore be varied to that extent.

A word about costs. The amount in dispute in this present action, even having regard to the unamended version is only RM125,000. In addition to that there is also a claim for medical expenses. It is agreed by respondent's counsel that the entire claim would not have exceeded RM250,000. It should never have been brought to the High Court. In substance, all that the respondent is claiming is a judgment on a contractual debt, partly liquidated and partly unliquidated. This is a claim that could well have been commenced in a magistrate's or Sessions Court.

Having regard to these facts it would be manifestly unjust to apply the costs order of the Rules of the High Court 1980 against the appellant. We therefore set aside the order for costs against the appellant and substitute in its stead an order for the assessment of the costs according to the scale as set out in the Subordinate Courts Rules 1980. Those are the costs that will be recoverable by the respondent against the appellant for the proceedings in the High Court. In so far as this appeal is concerned, the appellant must pay the taxed costs incurred in this court. The deposit to be paid to the respondent to account of taxed costs. The order for the assessment of medical expenses before the registrar remains. The respondent should have interest at 8% per annum on the total judgment sum from the date of the writ to the date of settlement.

The appeal is dismissed on those terms.